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Report on Partial Charter Revision (Municipal Measure No. 54);
Report on Leasing Property for State Use (State Measure No. 2)

City Club of Portland (Portland, Or.)

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**REPORT
ON**

PARTIAL CHARTER REVISION

(Municipal Measure No. 54)

Act amending Chapters IX, XI, XII and XIII of city charter relating to local improvements, assessments and collections, special services, and public facilities and works, so as to modernize, simplify, clarify, broaden or make more specific the powers and procedures relating thereto, and to facilitate administration.

To the Board of Governors,
The City Club of Portland:

I. ASSIGNMENT

This Committee was appointed to study and report on proposed revisions of Chapters IX (Local Improvements; Assessments; Collections), XI (Special Services), XII (Public Facilities and Works) and XIII (Charter Revision and Construction) of the Portland City Charter which were adopted by the City Council on August 14, 1964 for referral to the voters.

II. BACKGROUND

The proposed revisions represent a continuation of a long-range project of the City (through the City Attorney's office) to revise the entire City charter by deleting archaic provisions, reorganizing material and making changes of a "house-keeping" nature. The purpose of this project is to provide the City of Portland and its City Council with a more workable charter reflecting the experience gained by the Council and the City administrative bodies in working for the most part of the twentieth century under substantially the present charter.

Two years ago, revisions were proposed to Chapters II, III, VII and VIII of the charter and were reported to the City Club by a committee of which the chairman of your committee was a member. (City Club Bulletin, Vol. 43, No. 22, Oct. 26, 1962, Pages 593-602). That report presented a thorough review of all former charter revisions and revision attempts which this Committee feels is unnecessary to repeat here.

The proposed revisions on the ballot this year have never before been presented to the voters and were not made available to the public for review until referred by the Council in August, 1964. In this connection, it should be mentioned that the relevant chapters of the charter in their proposed form comprise thirty-five closely printed pages.

III. RESEARCH AND INVESTIGATION

The primary task of this Committee was to compare the proposed revisions with the present charter, to study the implications of the changes proposed, and to form judgments on the desirability of and dangers presented by such changes. This Committee did not deem it its function to point out additional changes which might have been made in the present charter, although the Committee has done this in one or two instances. Following an analysis of the proposed revisions within the Committee, the members met with Miss Marian Rushing, Chief Deputy City Attorney, to explore with her the questions raised in the Committee members' minds and to give her an opportunity to explain changes which appeared to your Committee to be undesirable.

IV. GENERAL COMMENTS AND CRITICISMS

In reviewing the proposed revisions, this Committee found a number of objectionable provisions, as well as many desirable changes. Both are commented on specifically later. The Committee's principal objections, however, are the manner in which the measure was prepared and referred to the voters, the lack of time for a proper study and the general emphasis on efficiency of city operations rather than (and sometimes to the detriment of) the legitimate interests of the City's citizens. As was the case two years ago, the proposed revisions were prepared in the City Attorney's office, were reviewed within the City's administration and were adopted by the Council and referred to the voters. During the course of this preparation, no civic, business, labor, news media or other group was consulted, nor were any drafts of the proposed changes circulated outside City Hall. The proposed revisions were made available for review by interested citizens' groups only upon their adoption by the Council on August 14, 1964 — less than three months before the election. This Committee is particularly distressed because these same criticisms were made in the City Club report two years ago, yet failed to make any impression on City Hall.

This Committee does not charge the City Attorney's office or the City Council with any intentional wrongdoing. The work was tedious and difficult and was done conscientiously. For the most part, the changes are an improvement over the clutter of these chapters in the present City charter; perhaps not as much clutter has been deleted or clarified as could have been achieved, but there is a substantial improvement nonetheless. However, some of the proposed changes are substantive in nature (as opposed to "housekeeping") and should not be adopted without public hearings and adequate opportunity for study by the voters. Also, some of these substantive changes, and, because of inadvertent error, some housekeeping changes, pose at least the possibility of abuse of citizens' rights.

The City Attorney's office — concerned as it is with internal operations — does not regard these changes as being as "substantive" as did the Committee. Also, the City Attorney's office did not consider the possibilities of abuse significant.

This, the Committee thinks, is the crux of the problem. The City Attorney's office is essentially an internal body serving the needs of the Council and the department heads in administering the city government, and it is, therefore, oriented toward the administration rather than toward the citizens of Portland. The Committee recognizes the legitimacy of the administrative point of view and admits that the City Attorney's office is better informed than your Committee as to the needs for and effects of the proposed revisions. The Committee feels strongly, however, that any proposed revision of the charter, even of a so-called housekeeping nature, should be drafted with the active participation of interested groups of citizens whose viewpoint is not, through association and habit, oriented toward the administration of the City. Then, the proposed revision should be made available to the public well in advance of election day and before its terms are irrevocably fixed. This would provide a reasonable opportunity for study, criticism and, if necessary or desirable, change. The fact that this was not done is in itself sufficient reason for the defeat of this measure this November. This would afford an opportunity during the next two years for re-study of the measure before its being again submitted to the voters. The Committee does not feel that the continuation of the present charter provisions for the next two years would make any substantial difference in the operation of Portland's government.

V. ANALYSIS

1. Chapter IX: Local Improvements, Assessments, Collections

The great bulk of the proposed revisions (75 per cent by weight) is in Chapter IX, which deals with the many facets of establishing and financing a "local" improvement, that is, an improvement which is of special benefit to a particular area and is assessed to property owners within that area. Thus, Chapter IX is concerned with sewers, street improvements, street grades, elimination of grade

crossings and miscellaneous other local improvements. The Chapter provides for condemnation of property, measuring damages of and assessing benefits to property owners and procedures relating thereto, including notice, hearing, review of objections and appeals.

Oregon Revised Statutes, Chapters 223 and 224 deal with the same material and generally permit a city to adopt its own measures so long as these meet the minimal statutory requirements. The proposed revisions do meet these minimal requirements. On the other hand, these statutory requirements generally permit a city to afford less protection to property owners than does Portland's existing charter, as supplemented by the Public Works and Water Codes, and it appears to this Committee that this opportunity has been availed of in the proposed revision. For the most part, however, Chapter IX as revised, does not depart substantially from the existing charter provisions as supplemented by the Public Works and Water Codes and this Committee is doubtful whether the slight improvements that have been made are worth all the trouble that has gone into the drafting and the expense of bringing about the changes and, if passed, of reprinting and redistributing copies of the charter.

Following are specific comments on the proposed revision of Chapter IX:

a. ARTICLE 1—GENERAL PROVISIONS

(1) Definition of "Sewer" (Proposed Section 9-102)

This proposed section would broaden the existing charter definition of the word "sewer" to include all sewage and drainage facilities now within the definition of that word and also "the widening, straightening or diverting channels of streams, the improvement of water fronts, filling or grading lakes, ponds or other waters and increasing or diminishing the flow of waters in natural or artificial channels and such other acts and things as may be found necessary or appropriate for sewerage, drainage and proper disposal thereof." This broadened definition is drawn from the Oregon Statutes and may doubtless be related to proper drainage and sewage disposal in many instances. However, the broadened definition of the word "sewer" is significant in that the Council will have the power under the proposed Section 9-601 (as it does under similar provisions now in the Public Works Code), to "overrule any and all remonstrances" to a sewer improvement and to assess the total cost of such improvements to the property served thereby. Your Committee believes that the Council should have authority to carry out sewage and drainage improvements despite local opposition and to assess the cost to the property benefitted, but we question whether this authority should be extended to the broad range of subjects now included within the definition of the word "sewer" under the guise of "housekeeping".

(2) Progress Payments to Local Improvement Contractors

(Proposed Section 9-106)

This proposed section is an example of insufficiently considered repetition of old language in a new context, and while apparently harmless, certainly represents no improvement over existing charter provisions. The proposed section continues the past practice of limiting progress payments to contractors to 80 per cent of the "reasonable value of the work and material therefore (sic—"theretofore") performed", but now also provides that "in computing said percentage, the contract price estimated by the City Engineer, the cost of land . . . and the interest accrued and accruing upon progress payment warrants . . . shall be considered". In the existing charter these factors are to be considered only in determining the cost of an improvement for purposes of assessment. Your Committee can think of no instance in which the cost of land and the interest on warrants are appropriate consideration in determining the value of the work done by a contractor.

b. ARTICLE 2—STREET GRADES**(1) Notice Regarding Proposed Change of Grade**
(Proposed Section 9-204)

This proposed section, representing one of the few examples of an additional protection provided for property owners, will require that the City Auditor mail notice of a proposed change of grade to affected property owners, in addition to continuing the presently required publication and posting of notices.

(2) Objections and Claims for Damages (Proposed Section 9-205)

As revised, this section apparently will deny the Council power to award damages to an affected property owner arising from a change in street grade if that owner has failed to present his claim in the time and manner prescribed in the charter. The existing section dealing with this subject would permit such an award of damages.

c. ARTICLE 3—CONDEMNATION PROCEDURES

Article 3, which now provides a method for condemnation in connection with establishment and change of streets, is renamed and broadened to provide a charter condemnation procedure available in substantially all cases in which less than a full fee simple title is to be taken. Assuming that a charter condemnation procedure is desirable as an alternative to the statutory method (the City Attorney's office claims that it is, and it does already exist with respect to streets), there seems to be no substantial objection to making the procedure more generally available. There are, however, some defects and changes in the procedure which merit comment.

Perhaps the most serious shortcoming of the charter condemnation procedure is that it fails to provide any compensation to an owner for the costs the owner may incur in connection with the determination of the condemnation award, even when the owner establishes that the amount first offered by the City was insufficient. Moreover, the charter also fails to provide for compensation to an owner for his expenses in connection with the proceeding when the Council ultimately determines, as Sections 9-306 and 9-309 permit it to do, that the proposed taking is to be abandoned. These omissions compare unfavorably with the provision in ORS 35.110 for payment of such costs and attorney fees in statutory condemnation proceedings when the owner recovers more than the amount tendered by the condemning authority.

The effect of the existing Section 9-304, with respect to the award of damages and the assessment of benefits in connection with a municipal condemnation proceeding, is that the Council cannot impose upon a property owner a determination less favorable to him than that proposed by the City Engineer and included in the notice sent to the owner, without first advising the owner of its intention to do so. The proposed amendment of this section changes this so that the Council could, after holding a supplementary hearing, award less damages or assess greater benefits than the Engineer's proposal, without first advising the owner of its intention.

The proposed amendments to Article 3 provide that the assessment of benefits for a particular local improvement may be postponed for inclusion in the assessment for a later improvement. This change appears desirable in cases in which two or more improvements are to be made in the same district within a relatively short time, because it avoids some duplication of the special assessment procedure. In at least one respect, however, this postponement may adversely affect the owners of property being taken for the improvement. Under existing Sections 9-307 and 9-308, the condemnation will fail unless the City obtains the funds necessary to pay the condemnation award within nine months after the amount of the award has been finally determined. Under the proposed amendment, this nine-months gap, during which time use of the property might be seriously restricted, could be

extended indefinitely if the assessment of benefits for the improvement were postponed for inclusion in the cost of a subsequent improvement. Moreover, the new Section 9-308 eliminates the existing provision that the affected owners would receive interest collected by the City on unpaid assessments.

The existing Section 9-313 authorizes the Council "to abandon and rescind proceedings" for municipal condemnation at any time prior to final consummation thereof. Such authority is not unusual, and except for the failure to provide for compensating an owner for expenses previously incurred in the proceedings, is not objectionable. The proposed Section 9-309, however, goes on to provide that the Council may terminate one proceeding "if it determines that alternative procedure should be followed" for the proposed acquisition. This proposed right, which is not conditioned on any sort of protection to the affected property owner, is another example of a revision made primarily, if not solely, for the convenience of city administration without sufficient regard to its impact on affected citizens.

d. ARTICLE 4—ELIMINATION OF GRADE CROSSINGS

The changes in Article 4 are of a housekeeping nature and are unobjectionable.

e. A NOTE ON "CHARTER ORDINANCES"

Articles 5, 6, 7 and 8 of Chapter IX dealing, respectively, with streets, sewer and other improvements and assessments and collections, are largely taken from the Public Works Code. Similarly, Article 1 of Chapter XI, dealing with water works, is largely taken from the Water Code. These provisions of the Public Works and Water Code were in the 1903 Charter in substantially the same form as now found in ordinances but were relegated to the status of "charter ordinances" by charter revisions in 1913 and 1928. As charter ordinances, these provisions are subject to amendment by the Council after satisfaction of prescribed notice and hearing requirements. Since most of these provisions deal with the rights of citizens, your Committee agrees that it is in keeping with the present detail of the charter to restore to these provisions the sanctity of the charter.

The amendments proposed in connection with returning these provisions to the charter are, except as noted below, essentially of a housekeeping nature and appear to be in order.

f. ARTICLE 5 and 6—STREETS AND STREET IMPROVEMENTS: SEWER IMPROVEMENTS

The changes proposed (primarily from the Public Works Code) are of a housekeeping nature and are unobjectionable, with one exception, as noted in the discussion below of Section 13-201.

g. ARTICLE 7—OTHER IMPROVEMENTS

(1) Miscellaneous Local Improvements (Proposed Section 9-703)

Proposed Section 9-703 is a new provision designed to give the City power to make local improvements not specifically provided for in the charter, and to assess the cost of these improvements to property particularly benefited. The existing charter, in giving the Council various broad powers, probably would permit the City to provide for such miscellaneous improvements. Your Committee believes it an improvement and a proper housekeeping change to make this power explicit. However, see the comment to proposed Section 13-201 regarding this section.

h. ARTICLE 8—ASSESSMENTS AND COLLECTIONS

As explained earlier, this proposed article is for the most part derived from charter ordinances now in the Public Works Code with some changes to make Article 8 generally consistent with ORS, Chapter 223, dealing with this subject.

Article 8 contains the following new provisions: Section 9-801 which gives the Council authority to exclude property from assessment if that property receives no benefit from a local improvement; Section 9-818, which is intended to clarify the Council's authority with regard to correction of assessments; Section 9-822, which gives the Council authority to use procedures provided by statute in lieu of those provided in Article 8; Section 9-823, which permits surplus funds in a particular local improvement fund to be transferred to the general assessment collection fund provided for in Section 9-907.

Your Committee feels that the following provisions in proposed Article 8 merit particular attention:

(1) Apportionment of Costs (Proposed Section 9-802)

This proposed section would require the City Auditor to apportion the cost of an improvement to the properties affected and to give notice thereof both by publication and by mail to the property owners involved. The language is substantially the same as Section 5-330 of the Public Works Code, but the omission of the word "forthwith" appearing in the existing requirement that notice be mailed to property owners raises the possibility that the period for filing objections to the proposed apportionment, which is 10 days after the first publication of notice, would expire before the notice was mailed. Presumably the publication and mailing of notice would be coordinated to prevent this result, but the proposed revision does not so require.

(2) Assessment lien and payment (Proposed Section 9-808)

This proposed section, dealing with the lien for and payment of an assessment, contains two examples of careless drafting which may or may not be subject to correction as clerical errors. The section provides that "statement" of any assessment shall be made to the treasurer, whereas the quoted word should be "payment". The section also provides that moneys collected upon an assessment shall be used only for purposes connected with the particular improvement "as hereinafter set forth", and inadvertently omits the precedent word "except". Further, since the intended exception appears 14 sections later, the proposed section might well have specified the exception by section reference.

(3) Redemption (Proposed Section 9-811)

In providing the period in which property sold for nonpayment of a lien may be redeemed, the proposed section differs from its predecessor in the Public Works Code in permitting the redemption period to be reduced, by ordinance, from a flat three years to a period of one to three years. The explanation received for this change was that in periods of comparative economic prosperity, three years was too long a time to allow for redemption. Whether or not this is true, your Committee does not feel that such a change should be made under the guise of housekeeping improvements. In attempting to bring about this change, moreover, the drafters built an inconsistency into the charter. Proposed Section 9-810, "Sale for Unpaid Assessments," provides that the certificate of sale which is delivered to the purchaser of property sold for unpaid assessments shall state "that the sale is made subject to redemption within three years from the date of certificate".

(4) Reassessment (Proposed Section 9-817)

This section, which is taken from Section 5-353 of the Public Works Code, permits the Council to make a reassessment whenever the original assessment has been set aside or invalidated for any reason. The existing provision states that the reassessment cannot exceed the amount of the original assessment, but this limitation has been omitted from the revision for the stated purpose of harmonizing the charter with the applicable state statute. ORS 223.415 provides expressly that the "amount of the reassessment shall not be limited to the amount of the original assessment", so the explanation given seems valid. On the other hand, the proposed Section 9-817 provides also that if a treasurer's certificate of sale has been issued in the process of collecting the original assessment, "upon the making of the reas-

assessment the property shall be resold and the proceeds of such sale shall be paid to the purchaser at the former void sale or to his assigns." This provision, in addition to being of doubtful validity, is directly contrary to ORS 223.455, which recognizes that the title of the original owner is restored if the lien foreclosure sale is invalidated and which provides the means of reimbursing the former purchaser for his investment in the transaction. No explanation was offered as to why harmony with the state statute was required with respect to the amount of the assessment and ignored with respect to the rights of the original owners of the assessed property.

The desirability—and sometimes the validity—of charter provisions which overlap state statutes are open to serious question. Certainly the existence of such overlapping provisions makes it much more difficult for any person affected thereby to determine his rights and obligations in the matter.

(5) Appeal (Proposed Section 9-819)

This proposed section, also taken from the Public Works Code but substantially revised, provides that a person who has filed an objection to an assessment, deficit assessment or reassessment which has not been satisfied by the Council may appeal to the Circuit Court to the extent permitted by statute. Although a right to appeal from a reassessment is provided by statute, there is no statutory provision for appeal from an original assessment or a deficit assessment (i.e., an assessment made necessary by costs exceeding the original estimate). While it would be useless to attempt to provide in the charter a right of appeal from an original or deficit assessment, since a city may not confer jurisdiction upon a state court, provisions in the charter protecting the rights of a property owner during the assessment process should be guarded with particular care in the absence of a right of appeal. There are several provisions of Article 8 which the Committee feels do not adequately protect the interests of a property owner. Reference has already been made to the deletion of the word "forthwith" regarding the mailing of notices of assessment. Another instance of possible abuse is found in proposed Section 9-803 dealing with the assessment of benefits to property owners. Under this section, as under Section 5-331 of the Public Works Code from which it is drawn, the Council may, after hearing objections, increase a proposed assessment against a parcel of property without notice and without opportunity of a new objection by the affected owner. In effect, this could deny a property owner any right of objection, since the owner may not have found the proposed assessment objectionable and therefore may have made no effort to appear before the Council regarding the particular improvement. While this is consistent with State Law (ORS 223.389), your Committee seriously questions whether such a possibility is desirable.

i. ARTICLE 9—FINANCING LOCAL IMPROVEMENTS

These proposed sections are substantially the same as existing charter provisions. The changes made are of a housekeeping nature and seem generally desirable.

2. Chapter XI: Special Services

Proposed Chapter XI would omit certain archaic bonding provisions covering ratification of prior issues (Section 11-102), refund water bonds (Section 11-202) and municipal auditorium bonds (Section 11-301). Provisions concerning the public auditorium commission (also Section 11-301), which we understand has not operated for many years, are also deleted.

This chapter also would add charter provisions taken from the present Water Code, with changes of an acceptable housekeeping nature.

Proposed Section 11-201 gives the functions of the old public auditorium commission to the Council with power to delegate the same to a commission established by charter or ordinance. Section 11-201 also provides, as is true at present, that auditorium employees are not subject to civil service requirements.

3. Chapter XII: Public Facilities and Works

a. RECREATIONAL AREAS

The proposed Sections 12-101 to 12-103 govern the acquisition, maintenance and administration of recreational areas and bring up to date archaic provisions of Sections 9-603 and 9-605. The proposed sections are more than merely house-keeping changes, but the authority to be given to the Council over recreational areas appears necessary and appropriate and not subject to abuse.

b. REVENUE BONDS (Proposed Section 12-201)

Proposed Section 12-201 governing financing of revenue-producing facilities makes important substantive changes in existing Section 10-104, but without amending or deleting Section 10-104. These changes will allow revenue bonds to be issued to finance revenue-producing facilities located inside or outside the City, rather than, as at present, only inside the City. Under the new section, such bonds may be secured not only by a pledge of revenues from the facility but also by the pledge of "any revenues from similar facilities". Though the City intends, for example, to support the Progress Golf Course with revenues from other golf courses and interprets the words "similar facilities" in this narrow fashion, in context the term could mean any other revenue-producing facility of the City. If it were so construed, the City could in this way finance a city facility not expected to produce any net revenues without going to the electorate to obtain an authorization for general obligation bonds.

c. ARTICLE 3—PERFORMANCE OF PUBLIC WORKS

(1) Contract or Direct Labor on Public Works

(Proposed Section 12-301)

This section was proposed in order to make it clear that the City may employ labor directly on public works and improvements and to clear up an ambiguity in this regard which the City finds in existing Section 8-105, as revised two years ago. We do not feel such an ambiguity really does exist, since Section 8-105 provides, in dealing with bidding requirements, that "this provision shall not prevent the Council from employing labor direct to construct or carry on public works or to make public improvements." The specific powers of the City, as set forth in charter Section 2-105(a)(5), include the power to construct public facilities. These two provisions considered together would appear sufficient to permit the direct employment of labor to construct a public facility.

Moreover, proposed Section 12-301 would also provide that "the Council may enter into contracts as it finds in the public interest for the . . . construction . . . [etc.] . . . of any public works [or] improvement . . ." This would not appear to require the City to advertise for bids of such a contract, but present Section 8-105, in dealing with the identical subject, apparently does require such bids (although even this is not clear). It is confusing, at least, to have two sections dealing with identical subjects in different terms located in separate chapters of the charter. Also, in case of conflict, it could result in the most recent provision controlling its predecessor, which in this case would be most undesirable.

(2) Production of Materials (Proposed Section 12-302)

For years, the City has operated a paving plant without express charter authority and this proposed section makes that authority explicit. Your Committee feels this is a proper and desirable change.

d. OMISSION OF ARCHAIC SECTIONS

Omitted from proposed Article XII as archaic are present sections governing repeal of the 1898 Charter (12-101), the emergency clause of the 1903 Charter (12-102), the effective date of the 1913 Charter amendments (12-105) and codification of the charter of the City as of 1913 (12-106). Also omitted are sections concerning re-enactment of portions of the 1903 Charter and Local Improvement Code as ordinances (12-103 and 12-104). Proposed Section 13-102 deals with this subject, but would delete the expensive notice and publication procedures presently required before the Local Improvement Code (composed of charter ordinances) may be amended. Since most of the protections to property owners contained in the Local Improvement Code are proposed to be reincluded in the charter (see the discussion regarding charter ordinances), your Committee feels this is a desirable change.

4. Chapter XIII: Charter Revision and Construction

Chapter XIII is entirely new and deals with the effect of repeal, amendment and substitution of charter provisions (13-101), the continuance of original charter provisions as ordinances (13-102), procedural ordinances (13-103) and construction and interpretation of the charter (13-201 and 13-202). The present Chapter XIII deals only with daylight saving time and is obsolete by reason of state statute.

a. ARTICLE 1—REPEALS, AMENDMENTS AND REENACTMENTS

(1) Effect of Repeal, Amendment and Substitution (Proposed Section 13-101)

This proposed section provides that when a particular grant of authority contained in the charter is repealed, expressly or by implication, unless the repealer specifically forbids it, the City will be empowered to continue any project or program under the former grant of authority if the City has contracted with another person in that regard, or if the City has begun the program, and termination would entail the risk of liability and damages, "or if the Council finds that third persons have materially changed their position in reliance upon Council action" under the repealed authority. While this section may be appropriate to a limited extent, your Committee questions the phrase quoted above as it may be applied to permit the City Council to continue practically any program which it wishes. Your Committee feels that sufficient protection against costly uncompleted projects is provided by permitting completion of projects which entail the risk of liability and damages if not completed.

b. ARTICLE 2—CONSTRUCTION AND INTERPRETATION

(1) Restrictions and Limitations (Proposed Section 13-201)

This proposed section provides that the City's powers are limited only if that limitation is express, that the specification of procedures in the charter (or in the statutes) shall not exclude other or alternative procedures unless the specified procedure is expressly stated to be the sole procedure, and that the City shall have all necessary or convenient powers to carry out its general or special authority. Your Committee was informed that the primary purpose of this proposed section is to permit the City to do anything permitted by statute, even if apparently contrary to the City Charter, unless expressly forbidden by the charter. While this will certainly provide flexibility to the City Council, it may emasculate many of the apparent protections contained elsewhere in the charter. For instance, Sections 9-502 and 9-703 dealing with street improvements and other local improvements permit procedures as prescribed by ordinance. Such procedures could include assessment and collection which apparently are provided for by the charter. The City Attorney's office confirmed to us that if the State statutes would permit these matters to be dealt with by ordinance (as they do), it would be that office's interpretation that they could be dealt with by ordinance despite apparent charter provisions to the contrary. Your Committee finds this possibility objectionable.

VI. CONCLUSIONS

The charter of the City of Portland needs revision. Much of it is archaic and confusing, and it is a laborious and disappointing task to attempt to determine the rules governing any particular matter from the maze of interrelated and often conflicting charter and statutory provisions. The office of the City Attorney has undertaken the job of revision and has proposed numerous changes. On the whole, your Committee can say that the proposed revisions are perhaps somewhat better than the existing provisions which they would replace. The Committee must also say, however, that the proposed revisions are in many respects undesirable, and that further improvement is clearly possible. Moreover, the Committee believes that a thorough review of the proposed revisions by informed and interested persons would reveal additional defects which your Committee has not discovered in the time available to it.

The principal objections of the Committee are that the proposed revisions were drafted entirely by city employees, no outside civic or interested groups were consulted, and the public was not apprised of the content of these revisions until they were placed on the ballot only two months ago. The effort behind this ballot measure has been substantial, but it has clearly not been the best collective effort of the community.

Unilateral revision of the charter is objectionable whether the revision is characterized as "housekeeping" or "substantive". The line between housekeeping and substantive change is very difficult to draw, and in either case the amendments should be fully considered by as many interested parties as possible. To the extent that the proposed revisions are merely housekeeping, no significant prejudice can result from a delay in their enactment. To the extent that the proposed revisions are more than mere housekeeping, no justification can be advanced for their being presented to the public on a take-it-or-leave-it basis without first having been presented for thorough consideration and possible change.

VII. RECOMMENDATION

Your Committee unanimously recommends that the City Club go on record as opposing this charter amendment, and urges a vote of "No" on Municipal Measure 54.

Respectfully submitted,

Ogden Beeman
Jonathan U. Newman
Milo E. Ormseth
David M. Wood
Robert C. Shoemaker, Jr., *Chairman*

Approved October 22, 1964 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 26, 1964 and ordered printed and submitted to the membership for presentation and action.

REPORT
ON
LEASING PROPERTY FOR STATE USE
(State Measure No. 2)

PURPOSE: To amend Constitution to permit State of Oregon and its agencies to lease real property for a period not exceeding 20 years.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was appointed to study and report on Ballot Measure No. 2, appearing on the November 3, 1964, state ballot.

This proposed amendment to the State Constitution was submitted to the people by Senate Joint Resolution 19, adopted by the 1963 Legislative Assembly.

The Oregon Constitution prohibits the creation of state debt in excess of \$50,000.00 unless specifically voted by the people. Section 7, Article XI of the Oregon Constitution, provides as follows:

“Sec. 7. The Legislative Assembly shall not lend the credit of the state nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war or to repel invasion or suppress insurrection or to build and maintain permanent roads; and the Legislative Assembly shall not lend the credit of the state nor in any manner create any debts or liabilities to build and maintain permanent roads which shall singly or in the aggregate with previous debts or liabilities incurred for that purpose exceed one percent of the true cash value of all the property of the state taxed on ad valorem basis; and every contract of indebtedness entered into or assumed by or on behalf of the state in violation of the provisions of this section shall be void and of no effect.”

State Ballot Measure No. 2 is intended to create an important exception to the state debt limit. The Oregon Supreme Court has consistently held that the obligation to pay rent under a binding lease is indebtedness, and that the Constitutional debt limit prohibits the state from entering into a long-term lease which obligates the state or any of its agencies to pay a total rental which exceeds (by more than \$50,000.00) current appropriations for the payment of such rentals.

The current practice of the state is to enter into leases up to ten years, where desired, avoiding the debt limit prohibition by means of a so-called “saving clause” making the lease subject to appropriations being made by each succeeding legislature.

The proposed amendment would exempt from the prohibition against state debt, leases entered into by the state or state agencies, for terms not to exceed twenty years, by adding the following language to Section 7, Article XI:

“* * * This section does not apply to any agreement entered into pursuant to law by the state or any agency thereof for the lease of real property to the state or agency for any period not exceeding 20 years and for a public purpose.”

The Measure has nothing to do with the state leasing property as a landlord to others (such as the lease by the state to Boeing of the Boardman site); the leasing referred to is leasing *by* the state of property to be used by the state as a tenant.

II. SCOPE OF INQUIRY AND SOURCES OF INFORMATION

In the course of its study, your Committee as a group, or its members in sub-committees or individually, interviewed the following:

Ross Morgan, State Representative, Multnomah County,
Co-Chairman, Ways & Means Committee, 1963 Legislature
Stafford Hansell, State Representative, Umatilla County
Harry D. Boiven, State Senator
Freeman Holmer, Director, Department of Finance and Administration,
State of Oregon
Sam R. Haley, Legislative Counsel
Howard C. Belton, State Treasurer
Russell F. Bonesteele, State Representative, Marion County
William Bass, Assistant Legislative Fiscal Officer
George Annala, Manager, Oregon Tax Research
John W. Shuler, Attorney at Law, Portland, Oregon

The Committee also corresponded with or contacted indirectly various others known to have some interest in or knowledge of the proposed amendment, including the following:

Alfred Corbett, State Senator, Multnomah County
Shirley Field, State Representative, Multnomah County
Robert Packwood, State Representative, Multnomah County
Kenneth Bragg, Legislative Fiscal Officer

Your Committee was also supplied with the various analyses of the measure appearing in current newspaper and periodicals, and an exhaustive article in the Wall Street Journal, page 1 Tuesday, September 22, 1964 (Western Edition), relating to leasing as a device for financing state capital expenditures.

III. ARGUMENTS IN FAVOR

(Many of the arguments advanced by the proponents of the measure concern the relative merits of the State's *leasing* branch offices rather than *owning* them. These arguments are, in the opinion of your Committee, not relevant to the issue presented by the measure; however, such arguments are listed because they continue to be made.)

1. Private owners can build more economically and efficiently than the state, and therefore it is cheaper for the state to lease from private owners under long-term leases than it is for the state to build and own its own buildings.

2. Better lease terms can be obtained by the state if it is permitted to enter into *binding* leases for periods of more than two years.

3. If long-term occupancy by the state is guaranteed, private investors will be more willing to build special purpose buildings for the state.

4. The state does not pay taxes on property it owns, thus putting an unfair burden on the community supplying governmental services to state-owned buildings.

5. State agencies and their needs change from time to time, and leasing permits greater flexibility in estimating the time the need may be discontinued.

6. The Legislature should be given the freedom to determine whether buildings traditionally owned by the state can be more economically leased from private owners.

7. The federal government has found leasing to be more satisfactory than building, including special purpose facilities such as post office buildings.

8. Needed facilities the construction of which has been ill-advisedly rejected by the voters can be constructed by private investors and leased to the state.

IV. ARGUMENTS IN OPPOSITION

1. The measure as a practical matter, repeals the constitutional debt limit, and would permit the Legislature to incur unlimited debt without vote of the people.

2. The state can and now does enter into long-term leases using a "saving clause" to lease space for branch offices—this method has worked satisfactorily for the federal government and is working satisfactorily for the state; therefore there is no need to amend the constitutional debt limit.

3. The strongest protection the Legislature has against the pressures exerted upon it to meet the constant demand for unlimited expansion of state services is the debt limit; the proposed measure would eliminate this protection.

4. The fact that Oregon is solvent and has a sound fiscal structure is in large measure due to the debt limit. If a state facility is so desirable that it justifies the state going into debt, the people should be given an opportunity to vote and approve the debt.

5. Many states have begun to use leasing as a device to accomplish building programs rejected by the voters. The proposed measure would make it possible to use this device in Oregon.

6. If major state facilities such as schools, universities, capitol buildings, prisons, etc., are built by private parties and leased to the state, any possible economy resulting from private ownership will be more than offset by higher interest costs and profit to private owners.

7. The risks of conditions and state needs changing are just as great when the state is bound on a twenty year lease as they are when the state owns the property; both the state and the private owner seek to amortize their investment in the period it is foreseeable the facility will be valuable.

8. Although the "saving clause" is satisfactory in leases of relatively small buildings for branch offices, it is unlikely that the Legislature would embark on any large-scale program of leasing major state buildings under leases containing a "saving clause"; and if such were the case, future legislatures could reject any really objectionable or ill-considered lease.

9. No study or inquiry of any kind has been made to determine the effect of the proposed amendment on the financial structure of the state, its effect upon the credit of the state with the institutions which purchase the state's bond issues, or the questions of fiscal policy involved.

V. HISTORY AND BACKGROUND

(a) Branch Office Building Program.

The 1959 Oregon Legislature enacted a law, sometimes referred to as the Branch Offices Building Act (ORS 276.142-162), which declared it to be the public policy of the state to promote economy, efficiency and convenience to the public by centralizing the location of office quarters of all state agencies having offices in the same community wherever practicable. The statute gave to the Department of Finance and Administration authority to purchase, construct or otherwise acquire branch office buildings as required to implement the policy of consolidating these offices.

There are ten to fifteen different state agencies with branch offices in the ordinary medium-sized Oregon city, and almost all Oregon cities have one or two branch offices in addition to the Oregon Liquor Control Commission green-front stores. Medford is a typical example with branch offices for each of the following state agencies or departments: Agriculture, Forestry, Department of Motor Vehicles, Industrial Accident Commission, Parole & Probation, State Police, Public Utilities Commissioner, State Highway Department, State Welfare, State Tax Commission, Department of Labor and OLCC. These agencies in most cases are widely scattered.

The situation in a few Oregon cities is as follows:

City	Number of Different State Agencies	Number of Different Office Locations
Bend	11	9
Coos Bay — North Bend	9	9
Hillsboro	8	7
Klamath Falls	7	7
Medford	12	8

In some cases, the difference in services and function requires a different type location for one agency from that required for another, but in many cases better use of space, sharing of common facilities and personnel, and convenience to the public is achieved by consolidation.

Accordingly, the Department of Finance and Administration embarked upon a Branch Office Building program to begin the desired consolidation.

(b) Ways and Means Committee Objects to Building Rather Than Leasing.

In 1961 the state built branch office buildings in Eugene (\$583,000.00) and Pendleton (\$283,000.00). In 1963 construction was proposed for branch office buildings in Medford, Bend and Klamath Falls. However, when the appropriation bill for these projects came before the House Ways and Means Committee in the 1963 session, it was met with severe opposition. A number of members of the Legislative Assembly believed that the space available in privately-owned existing buildings was more than adequate to satisfy the need for state branch offices, especially in Klamath Falls, where the office vacancy rate was so high that space could be rented for less than half the current rate in other cities.

In the course of the hearings, among other factors mentioned as an argument in favor of the proposed building program was that the space available for leasing by the state would not be suitable for the type of consolidated facility desired without fairly extensive remodeling; that a long-term lease was required to induce a landlord to undertake such remodeling, and that the Oregon Supreme Court and the Attorney General had ruled that leases binding the state to rental obligations in excess of current appropriations were subject to the prohibition against debt exceeding \$50,000.00 without a vote of the people.

The Legislature, concerned with the apparent constitutional prohibition of long-term leases by the state, by joint resolution (Senate Joint Resolution No. 19) referred to the voters the proposed amendment to the Constitution. The amendment as originally proposed by the Senate would have exempted leases up to 50 years from the state debt limit, but it was amended in the House to exempt only leases up to 20 years and passed in that form.

(c) The State Already Does Enter into Long-Term Leases.

One of the most interesting aspects of the history of this measure is the fact that although binding long-term leases have been held to be subject to the state debt limit, it is generally agreed that leases which create only rental obligation to be paid from current appropriations do not create debt. Accordingly, the actual practice of the state is that it *does* enter into leases up to ten years. The average branch office lease is a five-year term. These leases contain a "saving clause" which provides that they are subject to the availability of funds appropriated by the Legislature.

The Department of Finance and Administration reports that the presence of the "saving clause" in its long-term leases has no discernable effect upon the rental costs, number of proposals by prospective landlords, or any other factor involved.

The historic stability of state and federal government as tenants (the federal government leases, for years, have contained a similar saving clause), apparently has resulted in consensus that the probability of the state availing itself of the "saving clause" is so remote as not to constitute a practical consideration to prospective landlords.

It is fairly clear that the Legislative Assembly was not aware that the state now enters into leases with a term of more than two years, nor that the only practical limitation upon the term of leases to the state is an enabling statute rather than the constitutional debt limit. ORS 276.429 authorizes the Department of Finance and Administration to enter into leases for periods not to exceed ten years.

(d) Measure Permits Unrestricted Capital Expenditures Through Leasing.

The sponsors of the measure indicate that they intended to permit long-term leases for state offices only, not to sanction leasing by the state of more elaborate facilities such as college and university buildings, prisons, schools, capitol buildings or other major facilities of the type usually presented for approval to the voters. However, it was universally agreed that the proposed measure would permit the construction of such facilities by private parties for lease to the state, irrespective of the debt limit or the availability of revenue to pay for such facilities.

VI. DISCUSSION

State Ballot Measure No. 2 is a "sleeper". What appears to be a simple house-keeping-type measure, punches a gaping hole in the constitutional debt limit, and could pave the way for a complete change in the fiscal structure and policy of the state.

It is clear that the sponsors of the proposed amendment intended it solely to permit the state to enter into long-term leases for quarters for branch offices of the various state agencies in cities throughout the state. In arguments pro and con on the issue of whether or not the state should lease or build these branch office facilities, a question had been raised in the 1963 Legislature whether or not the state could enter into a lease for more than two years without violating the constitutional debt limit. (The debt "limit" of \$50,000.00 is for all practical purposes, a debt prohibition.) The amendment under consideration was proposed in order to resolve that question and to make it clear that the state could enter into binding leases of real property for periods up to twenty years, irrespective of the debt limit.

(a) The arguments for and against leasing as opposed to ownership of branch offices are irrelevant since the State now enters into long-term leases without difficulty.

Most of the arguments and points raised in interviews by your Committee concerned the relative merits of leasing state branch offices as opposed to state ownership of such office facilities. However, there is nothing in the proposed amendment which in any way limits the exemption to leasing of branch offices rather than the leasing from private investors of a new state prison, for example, or a bridge across the Columbia. And, since the state is already leasing branch offices for periods up to ten years, the arguments for and against leasing of state agency branch offices and for and against state ownership of such offices are in large measure irrelevant to consideration of the proposed amendment.

The Department of Finance and Administration is responsible for arrangements for quarters for most of the state agencies. Most of the branch office facilities at the present time are leased from private owners. The average lease term is five years, not the two-year period the amendment was supposedly intended to remedy. Most of the leases involving space of any magnitude are the result of competitive proposals. A ten-year lease of a State Welfare office in Marion County was recently entered into by the state — there were sixteen proposals by prospective landlords desiring to furnish space.

The "saving clause" inserted in the leases currently used for leasing branch office space make the lease subject to appropriations of funds for the agency concerned by each subsequent legislature. An Attorney General's opinion of a few years ago cast some doubt on the effectiveness of a "saving clause" if the lease was intended to be binding on the state for longer than the current biennium; however, since the leases currently used by the state do not actually bind the state,

or any subsequent legislature, there is no intent to create a debt. On the other hand, the state's landlords and prospective landlords apparently do not consider the presence of the "saving clause" a practical objection because historically the state has honored these leases.

Many federal government leases contain a similar saving clause. For a number of years it was considered that one Congress could not bind the next, and that leases to the federal government must contain a provision that in effect permitted cancellation in the event a subsequent Congress refused to appropriate funds to enable the agency to comply with the lease.

Logic compels your Committee to the opinion that a prospective landlord would be happier with a lease with no "saving clause" than an otherwise identical lease which contains a "saving clause", and that if one lease is more desirable than another, the undesirable feature should be reflected elsewhere in the lease terms. However, those interviewed by your Committee who were familiar with federal and state government lease negotiations, maintain that no appreciable significance is attached to the presence of a saving clause. This apparently results from the historical fact that such clauses are rarely, if ever, invoked.

(b) Purpose of Amendment is to give flexibility in leases of branch offices, but inadvertently goes much further.

Despite the fact that the measure was designed to give the state flexibility in providing branch offices for state agencies, your Committee was concerned with the fact that the proposed amendment permitting the leasing by the state of more elaborate types of facilities, traditionally owned by the state, including those requiring expenditures of sufficient magnitude to require submission to the voters. Many of the sponsors of the measure interviewed by your Committee indicated surprise at the suggestion that more elaborate facilities than branch offices might be leased by the state or its agencies under the protection of the proposed amendment. However, the use of leasing as a device for fiscal manipulation to circumvent the voter is not a mere shadow; in many states it is a current reality.

(c) Leasing is a device used for fiscal manipulation in other states.

A recent article in the Wall Street Journal noted that although the voters in Santa Cruz County, California, voted on October 6th on a \$4 million bond issue to build a new courthouse, it didn't make much difference how the vote came out because the courthouse was going to be built anyway, in fact it was being completed as the voters went to the polls. The county leases the building from a non-profit corporation it organized to borrow the money and build the building.

Alameda County and the City of Oakland, California, plan to lease a \$25 million sports arena to be built by private investors. Chicago and Cook County plan to lease an \$87 million civic center for county and city offices. Over \$2 billion in school buildings have been leased by Pennsylvania school districts since 1952. The State of Illinois is leasing \$25 million worth of buildings and equipment for state colleges and universities and a new state penitentiary.

The voters in Los Angeles County voted down a bond issue for a new jail three times. However, Los Angeles now leases over \$67 million worth of projects, including the new \$17 million jail, and a \$1.4 million golf course. Over \$50 million in additional projects are planned or under construction which will be leased to Los Angeles, including five more golf courses, underground parking and a new court house. It is reported that rent obligations or amounts set aside to exercise options to purchase leased facilities account for an estimated 20 per cent of the property tax rate increase in Los Angeles County since 1959.

Some states create a semi-public corporation or building authority to borrow the money and build the facilities to be leased to the state, city or county, and in other areas, the facilities are constructed by private citizens or corporations.

One objection made to the use of leasing as a means of obtaining major state facilities is the asserted increase in costs. Assuming that the private investor can, by increased efficiency, save enough in construction costs to earn his profit on the lease, he must pay a substantially higher rate of interest on borrowed money than does the state. A 1 per cent higher interest rate on a \$10 million loan or bond issue results in an increase of over \$1 million in total interest costs over a 20-year period. The effect of the payment of real property taxes and income taxes by the private investor as a counterbalancing factor makes the cost issue complex beyond the scope of your Committee's inquiry, however, and no conclusions are drawn by your Committee on this issue. Your Committee notes that there is no evidence that any such study or inquiry has been made in Oregon except relating to branch offices for state agencies.

(d) Proposed Measure would permit use of Leasing as a device to circumvent voters in Oregon.

The present constitutional provision prohibiting the legislature from incurring debt in excess of \$50,000.00, prevents the use of leasing as a device in Oregon for deficit financing of major state capital expenditures without the approval of the voters. The legislature is subjected always to pressure from all sides to make appropriations for more services than the state can afford, and the debt limit is a strong and reliable crutch upon which the legislature can lean in resisting this pressure. The proposed amendment would emasculate the constitutional provision prohibiting non-voted state debt.

VII. CONCLUSIONS

1. The Constitutional provision prohibiting the Legislature from incurring debt without approval of the voters has been a basic and fundamental characteristic of the state's fiscal structure.

2. The proposed amendment to the Constitutional state debt limitation creates an exception which is sufficiently broad to permit circumventing the debt limit entirely.

3. The measure was designed to permit the state to enter into long-term leases of space for branch offices of state agencies, but the state appears to be entering into satisfactory long-term leases without the amendment, the only practical limitation being statutory, not the constitutional debt limit; and accordingly, the amendment does not appear to be necessary.

4. The use of leasing as a device to by-pass the voters was not intended by the sponsors of the measure, but such use is permitted by the proposed amendment.

5. In view of the recent tendency of state, county and municipal governments outside Oregon to use leasing as a device to circumvent the voters, and the extensive nature and type of projects undertaken under such leasing arrangements, the wisdom of inadvertently permitting the use of such a device in Oregon without further inquiry and a demonstrated need is open to serious question.

VIII. RECOMMENDATION

Your Committee unanimously recommends the City Club go on record as opposing this measure and urges a vote of "NO" on State Measure No. 2.

Respectfully Submitted:

Barrie D. Itkin
Theodore D. Lachman
F. Keith Markee, M.D.
John McIntosh
Howard E. Perkins
Milton C. Lankton, *Chairman*

The Committee wishes to acknowledge the participation of Luman G. Miller who was active on the Committee during its research and investigation but, due to absence from the city, was unable to participate in the final stages of writing and conclusions.

Approved October 22, 1964 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 26, 1964 and ordered printed and submitted to the membership for presentation and action.